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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
MCI Telecommunications Corporation)
)
Billing and Collection Services Provided)
By Local Exchange Carriers for Non-Subscribed)
Interexchange Services)

RM-9108

To The Commission:

COMMENTS OF THE ELECTRONIC COMMERCE ASSOCIATION

The Electronic Commerce Association ("ECA") hereby files its comments in support of the Petition for Rulemaking filed by MCI Communications on May 19, 1997 ("MCI Petition").

I. Introduction to the Electronic Commerce Association.

The Electronic Commerce Association ("ECA") is an advocacy organization dedicated to promoting the growth of electronic transaction technologies and facilitating the development of electronic commerce. The ECA strives to educate its members, regulators, and the public regarding issues and legislation that will affect the way business is transacted in the digital age.

The ECA's membership includes, but is not limited to, providers of enhanced telecommunications services in emerging product markets. Thus, ECA members offer services such as web hosting and design, calling card and pre-paid calling services, conference and call forwarding services, voice mail services, long-distance telephone services, internet telephony services, and various information and pay-per-call services. All ECA members are independent entities, unaffiliated with any local exchange carrier ("LEC"). In some cases they compete with LECs in the

provision of certain services. Thus ECA members enhance consumer choice by providing a wide variety of enhanced and information services. ECA members also provide much-needed competition to LEC service offerings.

However, in doing so the ECA's members must largely rely on LEC billing and collection services in marketing their products. Millions of Americans have benefited from the efficiency, ease, and convenience of receiving bills through their local telephone company. But recent unwarranted and arbitrary actions by the LECs are having a profound effect on the ability of a number of ECA members to continue providing these services.

II. LECs Are Using Their Billing and Collection Policies To Impede Or Even Cut-Off Competition

The MCI Petition accurately describes the danger to the competitive market for non-subscribed interexchange services by the threatened cut-off of billing and collections services. In the 18 months since the MCI Petition was filed, LEC billing and collection policies have become more aggressive and now threaten another sector of the competitive market: third party enhanced services.

The MCI Petition sets forth the many benefits of non-subscribed services:¹ non-subscribed long-distance for example, fulfills a "universal service" goal for low-income callers, enhances consumer choice, promotes network reliability, and creates competitive opportunities for entrepreneurial companies. Non-subscribed services, such as long distance accessed through 10XXX, collect calling services, and toll calls billed to third party numbers, not only account for a significant portion of long distance revenue, but provide much needed competition in the

¹ MCI describes "non-subscribed services" as "those services provided to customers where the use of such services is the result of event-generated customer choice, rather than the result of a previous decision, perhaps made by other parties, choosing the primary interexchange carrier for the telephone number from which the call originates." MCI Petition at 3.

telecommunications market². ECA members provide some overlapping competitive services, including long distance, but also provide enhanced services such as web hosting and design voice mail service, and caller identification ("Caller Id"). Thus, ECA's members provide parallel competitive benefits in the enhanced services market.

Yet LECs have adopted increasingly hostile billing and collection ("B&C") policies with respect to third party enhanced service providers. Recently, the Billing Reform Task Force enumerated the following examples of such billing practices: "unilateral, non-negotiable changes to billing contracts, termination of billing and collection services based on an unreasonably low incidence of consumer complaints; imposition of high financial penalties for investigating individual instances of unauthorized charges; adoption of unreasonably high reserve and withhold requirements, some of which create barriers to entry; imposition of indefinite moratoria on the provision of certain types of billing and collection services . . ."³

Third party enhanced services providers will not survive without access to a cost-effective B&C mechanism. The MCI petition addresses the economic impossibility of using direct remittance, which is prohibitively expensive for occasional use of non-subscribed services. Likewise, the development of non-LEC (i.e., third-party) billing for non-subscribed services is not feasible, since LECs tariffed rates for Billing Name and Address ("BNA") are prohibitively high. MCI also explored billing through cable companies, public utilities, waste collection agencies, credit card companies, and banks, all of which have significant difficulties.⁴ Thus, Commission reregulation of LEC B&C services is vital to the continued existence of third party enhanced service providers.

² Most recently, even the country's largest long-distance company, AT&T, reacted to these competitive forces by initiating its own non-subscribed long distance telephone service.

³ See Comments of the Billing Reform Task Force filed on November 13, 1998, In the Matter of Truth-In-Billing and Billing Format, CC Docket No. 98-170, (released September 17, 1998).

⁴ See MCI Petition at 7-9.

The LECs also have the means and incentive to use their B&C policies as an anti-competitive tool. Some LECs have limited the total dollar amount they will bill for a particular third party service, thus ensuring that any third party service becoming too successful will lose its ability to bill and collect for such services through the LEC. A LEC may cease billing and collecting for certain services, such as web hosting, when that LEC introduces its own competing version of the same service. Most significantly, LECs can threaten to cut off B&C services completely to third parties, while continuing to bill and collect for identical services provided by themselves or their affiliates. The changes in LEC B&C policy have largely coincided with the growth of third party enhanced services, and as the LECs prepared to enter the long distance market. This issue becomes more urgent as LECs continue to merge with each other. When LECs merge, there are fewer parties available to provide B&C services. If a LEC discontinues B&C service after a merger, the damage is exponentially greater to third parties, because the ability to compete in much larger LEC regions is completely eliminated from the third party's potential customer base.

III. The Commission must exercise its jurisdiction over billing and collection to meet Communications Act mandates.

Although the Commission currently does not exercise Title II jurisdiction over billing and collection services,⁵ it may exercise Title I ancillary jurisdiction when "necessary to ensure the achievement of" statutory goals.⁶ The Commission has three statutory mandates that must be upheld through adoption of fair and impartial B&C rules. They are reflected in Sections 257, 272, and the nondiscrimination provisions of Section 202 of the Act.⁷

First, Section 257 of the Act requires the Commission to identify and eliminate "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of

⁵ ECA has requested that the Commission exercise Title II authority. See Comments of the Electronic Commerce Association, filed on November 13, 1998, In the Matter of Truth-In-Billing and Billing Format, CC Docket No. 98-170 (released September 17, 1998).

telecommunications and information services, or in the provision of parts or services to providers of telecommunications services and information services.”⁸ The Commission has interpreted the term “market entry barrier” as “primarily intended to encompass those impediments to entry within the Commission’s jurisdiction that so significantly distort the operation of the market and harm consumer welfare that they justify regulatory intervention.”⁹ ECA has outlined some of the major anti-competitive behavior by LECs that warrant Commission intervention. ECA’s constituents are predominantly parties that meet the Commission’s definition of “small business.” However, ECA’s members are hesitant to provide their names and relevant corporate information for fear of reprisal. Absent Commission action, small businesses using LEC B&C services will be forced out of business. Moreover the refusal to provide new entrants such services will operate as a insurmountable barrier to entry for small businesses seeking to offer these third party services.

Section 272 of the Act provides an independent basis for the Commission to regulate B&C service. The Commission itself has noted that Section 272’s nondiscrimination standards for certain LECs (“BOCs”) require that B&C services be provided in a non-discriminatory manner.¹⁰ The Telecommunications Act of 1996 recognized the BOCs’ historic anti-competitive behavior and adopted a 14 point checklist to ensure adequate competition before certain LECs could enter the in-region long distance market. To date, no BOC has met the test. In order to assure a level playing field, BOCs that provide services through structurally separated subsidiaries must provide those

⁶ Audio Communications, Inc., Petition for Declaratory Ruling that the 900 Service Guidelines of US Sprint Communications Co. Violate Sections 201(a) and 202(a) of the Communications Act, 8 FCC Rcd 8697, 8700 (1993).

⁷ Communications Act of 1934, as amended, 47 U.S.C. §§ 257, 272, 201, and 202 (hereinafter, “Act”).

⁸ 47 U.S.C. § 257(a).

⁹ Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, Report, 12 FCC Rcd 16802 (1997).

¹⁰ “[W]e find that there are certain administrative services, such as billing and collection services, that unaffiliated entities may find useful. Further, as discussed above, we construe the term “services” to encompass any service the BOC provides to its section 272 affiliate, including the development of new service offerings. We conclude therefore that the protection of section 272(c)(1) extends to any good, service, facility or information that a BOC provides to its section 272 affiliate.” Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21905, 22007(1996).

same services to third parties. 47 U.S.C. 272(c). The Commission specifically included billing and collections services in this category.¹¹ The fact that there is no mechanism to ensure that these LECs are complying with this standard is reason for the Commission to regulate LEC B&C services.

As noted above, ECA has encouraged the Commission to exercise its Title II jurisdiction over B&C. Thus, the Commission must enforce the “just and reasonable” standards of Section 201 and the nondiscrimination standard of Section 202 and protect the public interest by preventing LECs from using their B&C function to force competitors from the market. The Commission has said that there is a “process under the Telecom Act to adjudicate complaints brought against carriers for unreasonable activities on their part. So, if one of these competing providers felt that denial of billing or the shut-off of billing constituted an unfair practice, in that regard, they could bring a complaint before us and we would adjudicated it at that time.”¹² However, the Commission has also recognized that the complaint process was specifically named as an impediment to small business entry into the telecommunications sector.¹³ Although the Commission has adopted expedited complaint procedures, application of those procedures is discretionary and any regulatory delay means extinction for small businesses. As noted above, third party enhanced service providers have so little leverage to negotiate with LECs that they are fearful to provide their names in this proceeding. Thus, the piecemeal complaint process is not an adequate substitute for an increasingly widespread problem. Rather than adjudicate specific complaints on a carrier-by-carrier basis, the Commission should address this industry-wide problem through the rulemaking advocated by MCI.

IV. Conclusion

¹¹ Id.

¹²Sept 28, 1998 Hearing on Protecting Consumers Against Cramming and Spamming, Federal News Service transcript at 29, as quoted by Comments of the coalition to Ensure Responsible Billing filed November 13, 1998, In the Matter of Truth-In-Billing and Billing Format, CC Docket No. 98-170, released September 17, 1998.

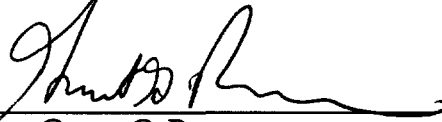
¹³ Barriers to Entry Proceeding, supra n.8, at paragraph 86.

Third party enhanced service providers provide important consumer and competitive benefits in the current telecommunications market. Their existence is threatened by increasingly hostile and unfair B&C policies adopted by LECs. The problem has worsened in the 18 months since the MCI petition was filed. It will not go away without Commission intervention.

The Commission may exercise its authority under Title I to promote the goals of the Act. The mandates of Section 257 (to eliminate impediments to small businesses), and Section 272 (BOCs must not discriminate against non-affiliates), both require the Commission to intervene now on B&C matters. Moreover, the Commission's Common Carrier Bureau has committed publicly to investigating alleged unfair and anti-competitive conduct. However, the complaint process is simply not a timely mechanism for the small businesses providing enhanced services. Therefore, ECA joins MCI in requesting that the Commission immediately begin a Notice of Proposed Rulemaking related to B&C practices.

Respectfully submitted,

ELECTRONIC COMMERCE ASSOCIATION

By: 

Garret G. Rasmussen
PATTON BOGGS LLP
2550 M Street, N.W.
Washington, D.C. 20037-1350
(202) 457-6000

Its Attorney